

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANNA GIBSON
Claimant

APPEAL 21A-UI-13171-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 03/21/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(4)a-c – Monetary Eligibility and Subsequent Benefit Year

STATEMENT OF THE CASE:

On May 28, 2021, the claimant, Deanna Gibson, filed an appeal from the April 22, 2021, (reference 02) unemployment insurance decision that denied benefits because of a lack of at least eight times the prior claim year's weekly benefit amount in insured wages during or after the prior claim year. After notice issued, a telephone hearing was held on August 9, 2021. Pursuant to notice, the hearing was consolidated with 21A-UI-13170-AR-T. Claimant participated personally. Claimant waived notice on the issue of timeliness. Department's Exhibit D-1 was admitted to the hearing record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?

Did the claimant earn insured wages of at least eight times the prior claim year's weekly benefit amount during or after the previous benefit year to become eligible for a second benefit year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's weekly benefit amount ("WBA") in the prior claim year effective March 22, 2020, is \$481.00. She wishes to claim benefits during a second claim year effective March 21, 2021. The claimant did not earn at least eight times the prior claim year's WBA in insured wages during or subsequent to the prior claim year beginning March 22, 2020. Claimant testified, and the administrative record reflects, that she earned \$425.00 in the fourth quarter of 2020 working for another employer. The administrative record reflects no other insured quarterly wages were reported to IWD by any other business entity since claimant opened the claim for benefits.

A decision disallowing benefits based on a lack of wages earned of at least eight times the weekly benefit amount was mailed to claimant on April 22, 2021. Claimant did not receive that decision. She first learned of it when she called in about the later disqualifying decision regarding her separation from employment. She promptly appealed both decisions at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not eligible to receive benefits during the subsequent benefit year.

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

Effective July 2, 2017, Iowa Code section 96.4(4)a and c provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

Claimant did not earn at least eight times the prior claim year's WBA in insured wages during or subsequent to the claim year beginning March 22, 2020. Therefore, claimant is not eligible to receive benefits during the current claim year beginning March 21, 2021.

DECISION:

The April 22, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant's appeal is timely. The claimant is not eligible to receive benefits during the current claim year beginning March 21, 2021. If claimant does earn eight times the prior claim year's weekly benefit amount in insured wages they may present evidence of that to IWD to determine eligibility.



Alexis D. Rowe
Administrative Law Judge

August 13, 2021
Decision Dated and Mailed

ar/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.